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July 1, 2021

VIA CM/ECF

The Honorable Jennifer L. Hall
 United States District Court for the
 District of Delaware
 844 King Street
 Wilmington, DE 19801

Public Version

Re: *Innovative Memory Solutions Inc. v. Micron Technology Inc.*
(C.A. 14-1480-RGA)

Dear Magistrate Judge Hall:

Pursuant to the Court’s Revised Scheduling Order (D.I. 118), Micron Technology, Inc. (“Micron”) submits the following discovery issues for resolution at the teleconference scheduled for July 12, 2021.

This dispute arises out of Plaintiff Innovative Memory Systems, Inc.’s (“IMS’s”) refusal to produce documents relating to a strategic review that its parent company, WiLAN, Inc., conducted in 2014. The strategic review occurred shortly before IMS and WiLAN purchased the patents-in-suit from SanDisk Corporation (“SanDisk”) and a few months before filing this lawsuit.¹ The occurrence of this strategic review is a matter of public knowledge, and several of the relevant documents produced in this case mention the strategic review. [REDACTED]

[REDACTED]
 Likewise, the strategic review resulted in WiLAN announcing new licensing strategies. See <https://www.globenewswire.com/news-release/2014/05/14/1381187/0/en/WiLANConcludes-Strategic-Review-Formulates-Growth-Plan.html>. The reasoning behind these new licensing strategies is relevant to and provides helpful context surrounding the eventual agreement to purchase SanDisk’s patents and the post-strategic review licenses that include those patents. As such, the licensing strategies will be relevant to the ultimate question of damages. See Fed. R. Civ.

¹ Because IMS is a shell company with no apparent employees, the parties have operated under the agreement that WiLAN’s documents would be searched and produced in response to discovery propounded on IMS.



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P. 26(b)(1) (generally allowing discovery into “any non-privileged matter that is relevant to any party’s claim or defense”).

Documents related to WiLAN’s strategic review are responsive to Micron’s RFP No. 24, which requests “All documents and things relating to any policy, practice, guideline or procedure at IMS or WiLAN with respect to licensing patents.” Ex. C at 22 (IMS Responses to Micron First Set of Requests for Production). In its response, IMS included only standard boilerplate objections but did not indicate that any responsive document in its possession would be withheld.² *Id.*

To date, IMS has refused to produce information concerning its strategic review. IMS has maintained that the strategic review is irrelevant, and asserted that the public information regarding WiLAN’s adopted licensing strategies is sufficient. But Micron has a right to explore those licensing policies, how they came to be, how they may have impacted the acquisition of the patents-in-suit, and whether they had any influence on subsequent licenses to the Asserted Patents that WiLAN obtained from other manufacturers of NAND and SSDs following the adoption of the strategies set forth at the conclusion of WiLAN’s strategic review.

Because documents relating to WiLAN’s strategic review are responsive, relevant, and not subject to any valid objection, IMS has no basis for refusing their production, and Micron respectfully requests that the Court compel IMS to produce such documents.

Respectfully submitted,

/s/ Frederick L. Cottrell, III

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CC: All Counsel of Record
FLC/tec

² Such responses leave Micron guessing as to whether IMS is withholding relevant materials and its basis for doing so, and are thus improper. *See, e.g., Caprate Events, LLC v. Knobloch*, No. 17-CV-5907-NGG-SJB, 2018 WL 4378167, at *2 (E.D.N.Y. Apr. 18, 2018).

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2021, I caused true and correct copies of *Micron Technology, Inc.'s Letter Brief Regarding Strategic Review* to be served upon the following counsel via electronic mail:

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